IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 248 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVA LAKHA GOHEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 248 of 2001

MR JM BUDDHBHATTI for Petitioner No. 1

MR VIPUL PANCHOLI, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/03/2002

ORAL JUDGEMENT

1. This appeal is preferred by the appellant accused Deva Lakha Gohel against the judgment and order dated 9.3.2001 passed by ld. Special Judge, Jamnagar in

Special Criminal Case No. 26/99 whereby the ld. trial Judge has convicted the appellant accused for the offence punishable under Section 325 of IPC and sentenced him to suffer S/I for 3 Years and to pay a fine of Rs.500/, I/d to undergo S/I for 15 days.

2. Heard ld. counsel Mr. Buddhbhatti for the appellant accused and ld. APP Mr. Pancholi for the State. It is submitted by Mr. Buddhbhatti that the appellant has joined original complainant as respondent no.2 and he has been served. It is further submitted that this gesture was made by the appellant accused with a view to see that matter is compounded with the permission of the Court as undisputedly victim Dana Devshi and the present appellant accused were once the partners and dealing in the same business. However, though the original complainant is served, he has opted not to appear before the Court and, therefore, this matter is heard today on merits.

3. That appellant accused came to be tried for the offences punishable under section 325 of IPC, under Section 3(11)(v) of Scheduled Caste & Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act) and under Section 135(1) of Bombay Police Act. Vide impugned judgment, the ld. trial Judge acquitted the appellant accused for the offences punishable under the Atrocities Act as well as under the Bombay Police Act, but convicted and sentenced him as aforesaid for the offence punishable under Section 325 of IPC.

4. Ld. counsel Mr. Buddhbhatti has taken me through entire evidence and the case of prosecution. According to the prosecution, on 16.3.1999, at about 11.30 A.M. at village Kalyanpur, Ta: Bhanwad, there was a scuffle between the complainant Dana Devshi and present appellant accused and complainant was assaulted with iron strip (patti), as a result of which the complainant Dana Devshi sustained injury on his right hand. Motive alleged by the prosecution is that the complainant was not paying the labour charges due to the appellant. On refusal of payment of wages, they had taken up quarrel and the appellant accused assaulted the complainant. Injured was taken to the hospital and on medical examination, it was found that the complainant had sustained fracture of right ulna.

5. Mr. Buddhbhatti has further submitted that looking to the facts and circumstances available on record including the evidence led by the prosecution, there is a little scope for the appellant to assail the finding as to conviction recorded by the learned trial Judge for the offence punishable under Section 325 of

IPC. He has opted not to argue the appeal on merits. On the other hand, ld. APP Mr.Pancholi supported the impugned judgment and submitted that in view of the oral as well as documentary evidence, no interference in the findings recorded is required. But during the course of submissions, ld. counsel Mr. Buddhbhatti has fairly submitted that the case of the appellant accused may be considered only on the point of sentence and there are justifiable legal grounds under which this Court can alter the substantive sentence substantially and can reduce it by enhancing the amount of fine.

6. I have considered the submissions advanced by ld. counsel for the parties. It is pertinent to note that the victim Dana Devshi has not sustained any complicated or compound fracture. There was no visible external injury found when complainant-injured was taken to the hospital for treatment. Mr. Buddhbhatti has rightly submitted that it is unfortunate on the part of the appellant that some scuffle has resulted into grave injury of fracture of ulna bone of right hand. Blow must not have been given with great force otherwise iron stip could have caused the compound fracture along with other visible injury. Ld. trial Judge ought to have imposed sentence of fine only and S/I for 3 years in such cases is very harsh. He has also pointed out that ld. trial Judge was also asked to consider the case of the appellant as to whether he can be granted benefit under the provisions of Section 360 of CrPC or under the Scheme of Section 4 of the Probation of Offenders Act. Ld. trial Judge has considered this aspect, but it seems that as appellant was simultaneously chargesheeted for the offences punishable under the Atrocities Act, report of Probation Officer was not even called for.

7. Without going into the merits of the approach of the ld. trial Judge, it can be observed that the ld. trial Judge should have called for the report from the Probation Officer as the case of the appellant was of first offence and is not a habitual offender and that incident must have occurred during the casual exchange of words regarding statement of accounts especially when complainant and accused were dealing in the same business and were once partners. Hence, harsh punishment was not required. I am told by ld. counsel Mr. Buddhbhatti that the appellant accused was in custody as under-trial till he was enlarged on bail, but he is not sure about the period for which appellant accused was in judicial custody. Mr. Buddhbhatti has, therefore, submitted that this is a fit case where only fine can be imposed and should be imposed. However, in response to the query raised by this Court and the fact that the appellant accused ought not to have given blow with iron stip to

the victim in casual exchange of words, only imposition of fine would not meet the ends of justice and some sentence requires to be awarded. In view of peculiar facts and circumstances of the case and especially when appellant belongs to other backward class, this is a fit case where this Court should exercise its powers and alter the order of sentence by upholding the order of conviction of the appellant accused under Section 325 of IPC. Order of sentence imposed is harsh because principles of penology and quantum of punishment are not considered by the ld. trial Judge. Hence, following order is passed :-

8. For the reasons aforesaid, appeal is partly allowed. Impugned judgment dated 9.3.2001 passed by ld. Special Judge, Jamnagar in Special Criminal Case No.26/99 in so far as holding appellant accused guilty for the offence punishable under Section 325 of the I.P.Code is hereby confirmed. However, order imposing sentence of S/I for 3 Years and to pay a fine of Rs. 500/ (Rs. Five hundred only), I/d to undergo S/I for 15 days for the offence punishable under Section 325 of IPC is hereby altered and modified to the effect that the appellant accused is sentenced to undergo S/I for 10 days and to pay a fine of Rs. 5,000/ (Rs. Five thousand only), I/d to undergo S/I for 2 months for the offence punishable under Section 325 of IPC. The appellant accused has already paid fine amount of Rs.500/ imposed earlier by the ld. trial Judge. Hence, appellant accused will be entitled to adjustment of said against amount of fine awarded vide this order and appellant accused shall pay remaining amount of fine within 15 (fifteen) days from the date of receipt of writ of this Court. It is further observed and directed that if appellant accused has remained in judicial custody as an under-trial for more than 10 days, he will not be required to surrender to serve the sentence imposed vide this order. However, if he has not remained in judicial custody for such period, he shall surrender to the trial Court within 15 (fifteen) days from today and trial Court shall see to it that appellant accused undergoes the imprisonment imposed by this Court. It is further ordered that the fine, if paid by the appellant accused, Rs. 4000/ (Rs. four thousand only) be paid to the complainant Dana Devshi by way of compensation. Muddamal be disposed of as per the order of the trial Court.
Yadi to the concerned Court.

6.3.2002 [C.K. BUCH, J]
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